

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN PIRAU, JR.,

Defendant-Appellant.

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UNPUBLISHED

July 17, 2003

No. 239007

Washtenaw Circuit Court

LC No. 01-001052-FH

Before: Fitzgerald, P.J., and Hoekstra and O'Connell, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced defendant to consecutive terms of imprisonment of 1 to 7½ years and five years,<sup>1</sup> respectively. We affirm.

This case arises from an incident where defendant left a gun at his ex-wife's residence and the landlord of the residence retrieved the gun and turned it over to police. At trial, defendant's ex-wife's son, who was sixteen years old at the time of the incident, testified as follows. He was home alone in the early evening on November 10, 2000, when defendant knocked on the door. When he opened the door, defendant handed him something wrapped in a blanket and told him to hide it. He knew it was a gun from the feel of the object, but he also unwrapped it and looked at it. After hiding the gun between two bed mattresses in the basement, he returned upstairs and defendant asked him to retrieve the gun. He got the gun and set it on the living-room couch; he then left the room and when he returned, defendant had left, but the gun remained.

Meanwhile, according to the testimony of the landlord, defendant's ex-wife wanted to hide, so he locked her in his tattoo parlor, which is adjacent to his shop and near the ex-wife's residence. The landlord then learned that his friend had observed defendant entering the house with a firearm. The landlord's friend testified that while in the shop, he saw defendant walking

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<sup>1</sup> The trial court sentenced defendant on the felony-firearm conviction as required by statute for a second offense offender. MCL 750.227b.

to the back of the house next door and carrying a weapon—a long rifle. Initially, the weapon was wrapped in a blanket, but the blanket fell away and he could see the weapon.

A couple of minutes after the landlord locked defendant's ex-wife in the tattoo parlor, defendant entered the landlord's shop and asked for his ex-wife. The landlord told him that she had left. The landlord asked defendant, who was visibly upset, if he had taken a gun into the house and defendant said that he had. The landlord asked defendant if he could get the gun, and defendant agreed. After retrieving the gun, the landlord returned with it to his shop and hid it in a hide-a-bed sofa in the back room. Defendant repeatedly asked the landlord for the gun, saying that he would not leave the shop without it. At some point, the police were called and the police seized the gun.

Defendant testified in his defense, explaining that his friend, nicknamed "Crazy Mike," picked him up in his truck and they were driving when Mike told him about the gun his girlfriend recently bought. Defendant felt that Mike, who was heading to a bar to collect a debt and was in a bad mood and had been drinking, should not be armed. Mike stopped his truck by defendant's ex-wife's residence and after defendant got out of the truck, Mike handed defendant the gun, which was wrapped in a blanket, and drove off. According to defendant, after he gave the gun to his ex-wife's son, he had no more contact with the blanket or the gun, and he did not tell his ex-wife's son to retrieve the gun from the basement. Defendant explained that after the landlord retrieved the gun, defendant demanded that the gun be returned to him because "I'm responsible for the gun" and defendant thought there would be a confrontation when Mike returned to get the gun.

On appeal, defendant first argues that the trial court erred in failing to instruct the jury on the definition of possession, denying him his due process right to a fair trial. Because defendant failed to object to the trial court's instructions, we review his claim for outcome-determinative plain error. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). Even if outcome-determinative plain error exists, whether to reverse is within this Court's discretion. *Id.* "Reversal is warranted only when the plain, forfeited error resulted in the conviction of an actually innocent defendant or when an error "seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings' independent of the defendant's innocence." *Id.* (citation omitted).

Here, defendant has failed to establish outcome-determinative plain error. The evidence presented at trial, including defendant's own testimony, demonstrates that defendant knew the blanket contained a gun and that he took the gun from the truck, carried it to the residence, and asked his ex-wife's son to put it in the basement. Defendant attempted to retrieve the gun from the landlord and indicated that he was responsible for the gun. Given this evidence, defendant is entitled to no relief with respect to this unpreserved issue. Even assuming that defendant had demonstrated outcome-determinative plain error, which he did not, it is manifest from the record before us that reversal is not warranted. *Carines, supra*.

Next, defendant challenges the sufficiency of the evidence to support his conviction of felon in possession of a firearm. Specifically, defendant challenges the sufficiency of the evidence concerning the "possession" element of the charged offense.

Possession of a firearm may be either actual or constructive; constructive possession exists “if the location of the weapon is known and it is reasonably accessible to the defendant.” *People v Burgenmeyer*, 461 Mich 431, 438; 606 NW2d 645 (2000), quoting *People v Hill*, 433 Mich 464, 470-471; 446 NW2d 140 (1989). Viewing the evidence discussed above in a light most favorable to the prosecution, a rational fact-finder could determine beyond a reasonable doubt that the requisite element of possession was met. Accordingly, there was sufficient evidence of defendant's possession of a firearm to support the possession element of defendant's felon in possession of a firearm conviction.

Defendant next argues that his convictions and related sentences violate both federal and state protections against double jeopardy. Defendant acknowledges that this Court specifically has rejected this argument in *People v Dillard*, 246 Mich App 163, 167-168; 631 NW2d 755 (2001). The decision in *Dillard* constitutes binding authority under MCR 7.215(I)(1), and we decline defendant's invitation to invoke the conflict-resolution provisions of MCR 7.215(I)(2). Defendant is entitled to no relief with respect to his double jeopardy argument.

Defendant also argues that his felon in possession of a firearm conviction must be reversed because the statute violates both the right to bear arms, Const 1963, art 1, § 6, and the ex post facto clauses of the federal and our state constitutions. Again, defendant acknowledges that this Court has rejected these arguments. *People v Swint*, 225 Mich App 353, 374-375; 572 NW2d 666 (1997) (The felon-in-possession statute “represents a reasonable exercise of the state's police power to protect the health, safety, and welfare of its citizens,” and thus is not violative of the Michigan Constitution.); see also *People v Green*, 228 Mich App 684, 692; 580 NW2d 444 (1998), and *People v Tice*, 220 Mich App 47, 51-52; 558 NW2d 245 (1996) (“Because the protection of public safety is a valid exercise of the police power, . . . we find that application of MCL 750.224f [the felon-in-possession statute]; . . . to a person who is a convicted felon as a result of a conviction of a felony committed before the date that statute took effect does not violate the Ex Post Facto Clauses of the United States and Michigan Constitutions.”). Defendant also acknowledges that those decisions are binding authority under MCR 7.215(I)(1). We again decline defendant's invitation to invoke the conflict-resolution provisions of MCR 7.215(I)(2). Defendant is entitled to no relief with respect to these constitution-based arguments.

Affirmed.

/s/ E. Thomas Fitzgerald  
/s/ Joel P. Hoekstra  
/s/ Peter D. O'Connell